

ESTTA Tracking number: **ESTTA525289**

Filing date: **03/06/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mr.JorgeJ.Carnicero
Granted to Date of previous extension	03/06/2013
Address	3235 Foxvale Drive Oakton, VA 22124 UNITED STATES
Correspondence information	Theresa W. Middlebrook Counsel of record HOLLAND & KNIGHT LLP 400 South Hope Street Suite 800 Los Angeles, CA 90071 UNITED STATES theresa.middlebrook@hklaw.com Phone:213 896 2586

Applicant Information

Application No	85629450	Publication date	11/06/2012
Opposition Filing Date	03/06/2013	Opposition Period Ends	03/06/2013
Applicant	Middleburg Real Estate, LLC 611 S 32nd Street Purcellville, VA 20132 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: real estate brokerage services and real property management services

Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
The mark is primarily geographically descriptive	Trademark Act section 2(e)(2)
The mark is primarily geographically deceptively misdescriptive	Trademark Act section 2(e)(3)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		

Word Mark	ATOKA FARM
Goods/Services	Rights as an institution are claimed

Attachments	Opposition.pdf (6 pages)(225005 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/twm/
Name	Theresa W. Middlebrook
Date	03/06/2013

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Jorge J. Carnicero,

Opposer,

v.

Middleburg Real Estate, LLC,

Applicant.

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Opposition No.

ATOKA PROPERTIES

Application Serial No. 85/629,450

Attorney Docket No. 117964-00001

NOTICE OF OPPOSITION

In the matter of application Serial No. 85/629450, for the mark **ATOKA PROPERTIES** ("**Applicant's Mark**"), covering "real estate brokerage services and real property management" in Intl. Class 36, filed on May 18, 2012 by Middleburg Farms, LLC ("**Applicant**"), and published in the *Official Gazette* of November 6, 2012; Jorge J. Carnicero, an individual with an address of 3235 Foxvale Drive, Oakton, Virginia 22124 ("**Opposer**") believes he will be damaged by the registration of Applicant's Mark and hereby opposes the registration of same.

As grounds for the opposition Opposer declares as follows:

1. Opposer is a beneficiary of a trust ("**Trust**") which was established with the assets of the successful American industrialist, Jorge E. Carnicero, now deceased. In 1994, Mr. Carnicero and his wife acquired "Atoka Farm", in Fauquier County, Virginia, a historic property consisting of several residences, equestrian facilities, barns, other outbuildings, and huge tracts of land. Atoka Farm was used as the country home of the Carniceros. The Trust now owns Atoka Farm, as well as other assets, for the benefit of certain heirs of Jorge E. Carnicero, including Opposer.

2. Atoka Farm is within Virginia's original horse country, where the custom of naming estates and significant residences has been followed since at least the late 1600s. Atoka Farm's first buildings were built around 1816 when the unincorporated rural area has very few residents. Atoka Farm has been known by that name for many years and has retained that name through many changes of ownership of the property. Atoka Farm is currently known by that name, and is identified by that name by its owners, past and present, adjacent residents, within the surrounding areas, and by the members of the general public.

3. Over time, the rural area immediately adjacent to Atoka Farm became known as, and is currently known as, the village of Atoka, having been named after Atoka Farm, one of the area's original and most famous country estate properties.

4. Atoka Farm and the village of Atoka are within the Cromwell's Run Rural Historic District. The District is characterized by open, contiguous and pastoral land and is well known as an area for foxhunting, historic buildings, and prestigious historic estate properties and residences, specifically including Atoka Farm.

5. The village of Atoka has played an important role in Virginia and U.S. history. It's strategic location made it an important meeting place for John S. Mosby's Confederate Rangers during the Civil War and has been an important crossroads since the 1800's.

6. When John F. Kennedy was President of the United States, he and immediate family kept an residence in the village of Atoka known as Wexford.

7. Ronald Reagan leased Wexford from its then owners during the 1980 Presidential election. He used the home to prepare for debates and to meet with advisors.

8. Atoka Farm is the former country home of U.S. Senator John Warner, and for a time, his then wife, the actress Elizabeth Taylor.

9. Atoka Farm is famous and historic estate residential property long owned by powerful, famous, and/or wealthy persons, has been called by that name for many years, and has retained that name through many changes of ownership. The longstanding use and fame of the name Atoka Farm is a significant asset of the Atoka Farm property.

10. By any standard, Atoka Farm is a famous institution under Section 2(a) of the Federal Trademark Statute, 15 U.S.C. Section 1052(a).

11. Applicant is a limited liability company organized under the laws of the Commonwealth of Virginia, with an address of 611 South 32nd Street, Purcellville, Virginia 20132. Applicant filed an application to register the mark **ATOKA PROPERTIES** on May 18, 2012 at the U.S. Patent and Trademark Office and the application was subsequently published in the Official Gazette of the Trademark Office on November 6, 2012.

12. Upon information and belief, Applicant is owned by Peter Pejacsevich, an Austrian citizen. Applicant is not located in the village of Atoka, and conducts no business in, around, or relating to the village of Atoka.

13. Neither Mr. Pejacsevich nor Applicant have or have ever had any ownership rights or other property interest in Atoka Farm. Applicant's owner is married to a grand-daughter of Mr. Carnicero. This grand-daughter, along with her husband and children, were permitted to reside temporarily, under a limited and conditional right, in a residence at Atoka Farm under agreements with the Trust, which limited and conditional right has terminated and ended.

14. Applicant has adopted the name **ATOKA PROPERTIES** and taken other actions to falsely suggest a connection between Applicant and Atoka Farm, and thus to improperly and misleadingly trade on the fame, prestige, cache, and history of the historic country property Atoka Farm and the surrounding village of Atoka.

15. As the beneficiary of the Trust that owns Atoka Farm, Opposer has the right and duty to protect the name and integrity of Atoka Farm and prevent third parties with no ownership interest from creating confusion with the public by implying a false connection between that party and Atoka Farm, thereby lessening and harming the value of Atoka Farm and its name and causing damage to Opposer.

16. Atoka Farm is a famous institution. There is no connection between Atoka Farm and Applicant. Applicant's registration of the mark **ATOKA PROPERTIES** would disparagingly and/or falsely suggest a connection with Atoka Farm, and is barred by Section 2(a) of the Trademark Act, 15 U.S.C. Section 1052(a) which provides that:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it— (a) Consists of or comprises ... matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols

17. Atoka is a place name inextricably linked to the historic country property Atoka Farm and the surrounding area known as Atoka. Applicant's registration of the mark **ATOKA PROPERTIES** would be improper as the mark **ATOKA PROPERTIES** includes a descriptive term "properties" that has no distinctive characteristic, and "Atoka", the name of a well known place, thus is primarily geographically descriptive and/or primarily geographically deceptively mis-descriptive, and barred from registration by Section 2(e)(2) of the Trademark Act, 15 U.S.C. Section 1052(e)(2).

18. It would be improper to allow any party not located in the area of Atoka to own a registration that conceivably would allow the Applicant to bar others located in the area of Atoka from using Atoka as an accurate geographic indicator of the location of their businesses.

19. It would be further improper to allow any party not located within the area of Atoka to own a registration that would falsely imply that an area outside Atoka, namely Purcellville, actually is part of the area of Atoka, and/or that the geographic boundaries or meaning of Atoka is expanding or changing.

WHEREOF, Opposer prays that this Notice of Opposition be sustained and registration of application Serial No. 85/629,450 be refused.

Respectfully submitted,

Jorge J. Carnicero

Dated: Mar 6, 2013

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished by electronic mail
and U.S. Mail to:

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 on
March 6,
2013

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